

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS  
FOR THE COMMISSIONER OF COMMERCE

In the Matter of the Residential Building  
Contractor's License of Model  
Corporation

FINDINGS OF FACT,  
CONCLUSIONS AND  
RECOMMENDATION

A hearing was held before Administrative Law Judge Beverly Jones Heydinger ("ALJ") on March 25, 2005 at the Office of Administrative Hearings, 100 Washington Avenue South, Suite 1700, Minneapolis, Minnesota. The hearing was held pursuant to a Notice of and Order for Hearing dated August 3, 2004, and an Amended Statement of Charges, dated February 16, 2005. The hearing concluded on March 25, 2005. There were no additional submissions.

Michael J. Tostengard, Assistant Attorney General, 445 Minnesota Street, Suite 1200, St. Paul, MN 55101-2130, appeared on behalf of the Minnesota Department of Commerce ("Department"). Joseph Shun, Owner, 775 Torchwood Drive, New Brighton, MN 55112, appeared on behalf of Model Corporation ("Respondent").

**NOTICE**

This Report is a recommendation, not a final decision. The Commissioner of Commerce will make the final decision after reviewing the record and may adopt, reject or modify these Findings of Fact, Conclusions, and Recommendation. Under Minn. Stat. § 14.61, the Commissioner's decision shall not be made until this Report has been available to the parties to the proceeding for at least ten (10) days. An opportunity must be afforded to each party adversely affected by this Report to file exceptions and present argument to the Commissioner. Parties should contact Glenn Wilson, Commissioner, Minnesota Department of Commerce, 85 Seventh Place East, Suite 500, St. Paul, MN 55101, telephone (651) 296-3528 to ascertain the procedure for filing exceptions or presenting argument to the Commissioner.

If the Commissioner fails to issue a final decision within 90 days of the close of the record, this report will constitute the final agency decision under Minn. Stat. § 14.62, subd. 2a. The record closes upon the filing of exceptions to the report and the presentation of argument to the Commissioner, or upon the expiration of the deadline for doing so. The Commissioner must notify the parties and the Administrative Law Judge of the date on which the record closes.

Under Minn. Stat. § 14.62, subd. 1, the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail or as otherwise provided by law. If the Commissioner fails to issue a final decision within 90

days of the close of the record under Minn. Stat. § 14.61, this report becomes a final decision. In order to comply with Minn. Stat. § 14.62, subd. 2a, the Commissioner must then return the record to the Administrative Law Judge within 10 working days to allow the Judge to determine the discipline to be imposed.

### **STATEMENT OF ISSUE**

By failing to satisfy the judgments against it, did the Respondent engage in acts and practices that demonstrate that it is incompetent, untrustworthy, or financially irresponsible, in violation of Minn. Stat. § 326.91, subd. 1(6)?

Based upon all of the files, records and proceedings herein, the Administrative Law Judge makes the following:

### **FINDINGS OF FACT**

1. The Respondent holds a Building Contractor's License from the Department, No. BC20216921.

2. In August 2003, the Department received a complaint from Mike and Renee Salzer of St. Louis Park, Minnesota. The Department's investigation revealed that the Salzers had commenced an action against the Respondent in Ramsey County District Court. Judgment was entered against the Respondent for \$11,050 in December 2003, and was amended to \$15,100 by Order dated January 23, 2004, and docketed on February 4, 2004.<sup>[1]</sup>

3. The Respondent entered into a payment plan to pay the judgment and, at the time of the hearing, was up-to-date on its payments, but the judgment had not been fully satisfied.<sup>[2]</sup>

4. On October 5, 2004, Jeffrey Jodell and Christine Guidera obtained a judgment against the Respondent in Ramsey County District Court for \$11,075.27. It was docketed on the same day.<sup>[3]</sup> At the time of the hearing, the Respondent had not satisfied the judgment or entered into a payment plan.<sup>[4]</sup>

5. The Respondent's license was summarily suspended on August 3, 2004, pending the outcome of this hearing.<sup>[5]</sup>

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

### **CONCLUSIONS**

1. The Administrative Law Judge and the Commissioner of Commerce are authorized to consider the charges against Respondent under Minn. Stat. §§ 326.91, 45.027, subd. 7, and 14.50.

2. Respondent received due, proper and timely notice of the charges against it. This matter is, therefore, properly before the Commissioner and the Administrative Law Judge.

3. The Department has complied with all relevant substantive and procedural legal requirements.

4. The Department demonstrated by a preponderance of the evidence that the Respondent has failed to fully satisfy the judgments against it, and is financially irresponsible, in violation of Minn. Stat. § 326.91, subd. 1(6).

Based upon the foregoing Conclusions, and for the reasons set forth in the accompanying Memorandum incorporated herein, the Administrative Law Judge makes the following:

### **RECOMMENDATION**

IT IS HEREBY RECOMMENDED: that the Commissioner of the Minnesota Department of Commerce take disciplinary action against the residential building contractor license of Model Corporation and/or impose an appropriate civil penalty.

Dated this 20<sup>th</sup> day of April, 2005.

S/ Beverly Jones Heydinger  
BEVERLY JONES HEYDINGER  
Administrative Law Judge

Reported: Tape-recorded (one tape)

### **MEMORANDUM**

The standard of proof required for administrative hearings is “a preponderance of the evidence, unless the substantive law provides a different ... standard.”<sup>[6]</sup> The Department must show that the Respondent has violated a statute or rule governing its license.

The Department alleged that the Respondent violated Minn. Stat. § 326.91, subd. 1(6). That provision allows discipline when the licensee “has been shown to be incompetent, untrustworthy or financially irresponsible.” In this case, two customers had to seek an order of the District Court in order to recover money from the Respondent. Once the judgments were entered, the Respondent did not promptly pay them. Thus, one must conclude that the Department correctly determined that the Respondent did violate the licensing rules and should be subject to discipline.

The Department did not offer any evidence concerning the basis for the judgments and no assumptions were made concerning the circumstances leading up to

them. It is sufficient that judgments were obtained and not paid. The Respondent asserts that it has had few complaints about its work. This information may be considered in determining the appropriate level of discipline.

**B.J.H.**

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<sup>[1]</sup> Ex. 1.

<sup>[2]</sup> Test. of Joseph Shun.

<sup>[3]</sup> Ex. 2.

<sup>[4]</sup> Test. of Joseph Shun.

<sup>[5]</sup> Notice of and Order for Hearing, Order for Prehearing Conference, and Statement of Charges and Order for Summary Suspension.

<sup>[6]</sup> Minn. R. 1400.7300, subp. 5.